

OLL 84-0812
6 March 1984

MEMORANDUM FOR THE RECORD

FROM:

Chief, Legislation Division
Office of Legislative Liaison

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SUBJECT: Hearings on H.R. 4681, the Federal Polygraph
Limitation and Anti-Censorship Act of 1984

SUMMARY: On 29 February 1984, I attended a hearing before the House Subcommittee on Civil Service of the Committee on Post Office and Civil Service, chaired by Representative Schroeder, on the subject of H.R. 4681, Representative Brooks' bill restricting the use of the polygraph and prepublication review requirements by federal agencies. Chairwoman Schroeder was the only real attendee at this hearing on behalf of the Subcommittee, as Representatives Pashayan and Wolf made only brief obligatory appearances at the start of the hearing and then departed.

The witnesses which appeared before the Subcommittee were primarily media and federal employee association representatives who strongly supported enactment of the above bill. Attached hereto is a complete listing of the witnesses who appeared before the Subcommittee. The only two witnesses to appear on behalf of the Administration and to oppose this proposed legislation were Richard Willard, Acting Assistant Attorney General, Civil Division, Department of Justice (DOJ), and General Richard Stilwell, Deputy Undersecretary of Defense for Policy, Department of Defense (DOD). There were no major surprises during the course of this hearing as Chairwoman Schroeder's questioning clearly indicated her support of the Brooks bill. While she did indicate at one point that the Top Secret briefing she had received from CIA and NSA had convinced her that there was a problem concerning unauthorized disclosures, she was equally certain that NSDD 84 was a totally inappropriate solution to this problem. She noted that the vast majority of leaks originated with top Administration officials, and that unless the solution encompassed serious measures designed to punish and deter such officials while they were currently in office rather than requiring them to sign prepublication agreements which addressed disclosures made after they left office, that she would have difficulty in supporting any proposed "bipartisan" compromise in this regard.

With respect to the repeated suggestions by both Messrs. Willard and Stilwell that the Administration was willing to talk with the Congress about a compromise solution, Representative Schroeder was somewhat critical and curious as to where these alleged negotiations were taking place since neither she nor Representative Brooks nor other key Congressional leaders, to her knowledge, had been contacted by high-level Administration officials to discuss such a compromise. Mr. Willard indicated that he personally had been spending considerable amounts of time talking with the staffs of various Senators and Representatives on this subject and indicated his willingness to do the same with Representative Schroeder and her people. Representative Schroeder was cool to this idea, and suggested that if the Administration is truly serious about working out a compromise that senior Administration officials should make arrangements to contact Representative Brooks and other key Congressional leaders to discuss this subject.

Indications at the hearing seemed to suggest that the Brooks bill will be reported out of the Subcommittee with only a few minor changes, the principal one being the possible expansion of the current exemption provided for NSA and CIA to include DIA and other DOD intelligence agencies. The bill is scheduled for full committee mark-up before Chairman Brooks on the 21st of March and it is expected that the bill will quickly be reported out of full committee and will be referred to the Rules Committee for further action. Whether the Rules Committee reports the measure out for full House floor consideration will depend upon whether the House Democratic leadership wishes to make an issue out of this subject during an election year. If the House Rules Committee does send H.R. 4681 to the floor for consideration, it is expected that the measure will pass without any major modifications.

1. The first witness to appear before Representative Schroeder was the bill's sponsor, Representative Brooks. Accompanying him was Representative Barbara Boxer from California who serves on Jack Brooks' Subcommittee on Legislation. Representative Brooks compared the polygraph and prepublication review requirements to the medieval uses of thumb screws and water torture. He stated that in his opinion the withdrawal of NSDD 84 was simply a political ploy by the Reagan Administration to diffuse this issue as a political campaign liability and that the need for this legislation still existed since the Reagan Administration in withdrawing NSDD 84 had only postponed the planned implementation of these policies. Representative Boxer sounded similar themes about the trampling of the inviolable First Amendment rights of individuals, and provided an extended discussion of Reagan Administration policies which demonstrated a clear disregard for these precious rights.

2. The next witness to appear was George Reedy, former Press Secretary to President Lyndon Johnson, who provided some rather incredulous testimony which in effect concluded that there were no secrets in the federal government that were worthy of protection. Mr. Reedy opined that classification stamps should be done away with altogether and that secrecy in government was a hindrance to effective policymaking and should be opposed not only through the passage of the immediate bill, but also through a comprehensive re-examination of the entire government security apparatus.

3. Richard Willard was the next witness and stated that with the withdrawal of NSDD 84, the Administration had indicated its clear willingness to sit down with Congress and work out a more reasonable and acceptable solution to the problem of unauthorized disclosures. As mentioned above, Representative Schroeder found this offer to be somewhat disingenuous and indicated she would not credit the Administration with truly seeking a compromise in this area until "senior" Administration officials contacted her and other key Congressional players to initiate meaningful discussions in this regard.

4. General Stilwell next testified and emphasized the limited use that DOD intended to make of the polygraph and the various procedural safeguards which would apply to DOD's use of this investigative technique. General Stilwell ended his testimony with a rather lukewarm endorsement of DOD's use of prepublication review. When asked if DOD intended to implement this expanded polygraph policy when the 15 April moratorium expired, he indicated that DOD plans in this regard obviously would be affected by Congressional action and guidance provided on this subject. General Stilwell seemed to indicate that strong Congressional opinion expressed in a form other than an actual bill could delay implementation of this expanded policy.

5. Dr. Fred Wood, Project Director of the Office of Technology Assessment (GAO) study conducted with respect to the polygraph, was the next witness. Dr. Wood repeated the conclusions contained in this OTA study that there was no scientific evidence to support the use of the polygraph for screening purposes, for administrative investigative purposes, or for use in large dragnet screening in connection with leak investigations. Dr. Wood called into question the exemption provided for CIA and NSA in section 6 of the bill since, in his opinion, there was not sufficient scientific evidence to support its use at either CIA, NSA, or other federal agencies. Given the absence of any kind of legislative framework for federal government use of the polygraph, Dr. Wood strongly

endorsed the Brooks bill, since Congress, in his opinion, should be making the judgment as to what, if any, use of the polygraph by federal agencies should be permitted.

6. [] Director, Center for National Security Studies, appeared next and testified only with respect to prepublication review, noting that, in his opinion, prepublication review was a violation of the First Amendment. [] stated that the withdrawal of NSDD 84 only removed the Presidential mandate for these expanded polygraph and prepublication review requirements and that agencies were still free to utilize their own authorities to implement these same policies. It thus was essential in his view that Congress take action through enactment of the Brooks bill so that implementation of these same policies by individual agencies would be prevented. [] also sounded the repeated theme that prepublication review discouraged public debate on important national issues by former senior policymakers and other highly qualified individuals. STAT

7. I departed from the hearing at this point since the remaining witnesses were comprised of several panels of media and government employee representatives who had earlier testified on this same subject before Representative Brooks and had noted their serious objections to any type of polygraph or prepublication review use in the federal government. As noted above, we can expect fast track consideration of this bill with it being reported out of the full Committee by the end of this month and its ultimate fate being decided by the House Democratic leadership's willingness to raise this issue in the current election year.

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Attachment

DISTRIBUTION:

- ✓ 1 - OLL Chrono
- 1 - LEG File: Polygraph
- 1 - LEG File: Prepublication Review
- 1 - SWH Signer
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SWH:csh (6 March 1984)

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U.S. House of Representatives

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON CIVIL SERVICE

122 CANNON HOUSE OFFICE BUILDING

Washington, D.C. 20515

TELEPHONE (202) 225-4028

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HEARINGS ON H.R. 4681

FEDERAL POLYGRAPH LIMITATION AND ANTI-CENSORSHIP ACT OF 1984

February 29, 1984

Witness List

Honorable Jack Brooks (Representative from Texas)

Honorable Barbara Boxer (Representative from California)

George E. Reedy, Former Press Secretary
President Lyndon B. JohnsonRichard K. Willard, Acting Assistant Attorney General
Civil Division, Department of JusticeGeneral Richard G. Stilwell (USA, Retired)
Deputy Under Secretary of Defense for Policy
Department of Defense

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Dr. Fred B. Wood, Project Director
Office of Technology AssessmentDirector
Center for National Security StudiesTownsend Hoopes, President
Association of American Publishers, Inc.Jim Hampton, The Miami Herald Editor
American Society of Newspaper EditorsRobert Lewis, National Secretary
Society of Professional Journalists, Sigma Delta ChiJack Landau, Executive Director
Reporters Committee for Freedom of the PressDr. Page Putman Miller, Director
National Coordinating Committee for the Promotion of HistoryRabbi David Saperstein, Co-Director & Counsel
Union of American Hebrew CongregationsKenneth T. Blaylock, National President
American Federation of Government EmployeesDennis T. Hays, President, & Ambassador Parker T. Hart
American Foreign Service AssociationJames Peirce, President
National Federation of Federal EmployeesDavid S. Burckman, President
Senior Executives AssociationHenry L. Canty, Past President
American Association of Police Polygraphists

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